



STATE BOARD OF OPTOMETRY  
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834  
P (916) 575-7170 F (916) 575-7292 www.optometry.ca.gov



## INFORMAL CITATION REVIEW CONFERENCE DECISION

### MODIFIED

CITATION NUMBER: CC 2012-144-M  
NAME: My B. Diep

DATE ISSUED: August 1, 2014  
LICENSE: OPT 12564

It is the Informal Citation Review Conference Decision of the Executive Officer of the Board of Optometry that the Citation Order be withdrawn and a modified citation issued for the following reason:

You presented mitigating evidence regarding the circumstances of the violations in that you accepted responsibility for your assumptions regarding the status of Daniel Hyunmin Cho's licensure, that the services billed to VSP during this time frame were performed by you at your other office, Eye Site Optometry in San Jose, California, and that, on February 4, 2013, Daniel Hyunmin Cho was in Los Angeles and not working at 20/20 Eye Club Optometry in Santa Clara, California.

Enclosed are a Statement of Rights, the Modified Citation Order, and a Notice of Appeal/Request for Administrative Hearing form. The Citation Order originally issued is withdrawn.

  
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MONA MAGGIO  
Executive Officer

August 1, 2014  
Date

**BEFORE THE CALIFORNIA STATE BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Modified Citation  
Against:

No. CC 2012-144-M

Dr. My B. Diep, O.D.  
2009 Tully Road  
San Jose, CA 95122

Respondent

On May 27, 2014, citation number CC 2012-144 was issued to My B. Diep, O.D by the Board of Optometry ("Board"). On June 13, 2014, My B. Diep filed a Notice of Appeal and request for Citation Review Conference. On July 22, 2014, an Informal Citation Review Conference was held.

It is the Informal Citation Review Conference Decision of the Executive Officer of the Board of Optometry that the Citation Order be withdrawn and a modified citation issued for the following reason: you presented mitigating evidence regarding the circumstances of the violations in that you accepted responsibility for your assumptions regarding the status of Daniel Hyunmin Cho's licensure, that the services billed to VSP during this time frame were performed by you at your other office, Eye Site Optometry in San Jose, California, and that, on February 4, 2013, Daniel Hyunmin Cho was in Los Angeles and not working at 20/20 Eye Club Optometry in Santa Clara, California.

**PARTIES**

Mona Maggio ("Complainant") brings this Citation solely in her official capacity as the Executive Officer of the California State Board of Optometry ("Board"), Department of Consumer Affairs.

On or about June 29, 2004, optometrist license number OPT 12564 was issued to My B. Diep, O.D. This active license will expire on November 30, 2014, unless renewed.

**STATUTORY PROVISIONS**

California Code of Regulations (CCR) Sections 1576 authorizes the executive officer of the Board to issue citations containing orders of abatement and/or administrative fines pursuant to Business and Professions Code section 125.9 against an optometrist who has committed any acts or omissions which are in violation of the Optometry Practice Act or any regulation adopted pursuant thereto.

Business and Professions Code (BPC), section 3110 provides that the Board may take action against any licensee who is charged with unprofessional conduct and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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(f) Any action or conduct that would have warranted the denial of a license.

(u) Permitting another person to use the licensee's optometry license for any purpose.

Section 3040 of the Code states:

It is unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained a certificate of registration from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry."

**CAUSE FOR CITATION**

On or about February 11, and February 18, 2013, you allowed Daniel Hyunmin Cho, an unlicensed optometrist, to practice optometry in your office, 20/20 Eye Club Optometry in Santa Clara, California. You permitted Daniel Hyunmin Cho to use your prescription pad to write prescriptions.

It is the Board's finding that you violated BPC section 3110(u) when you permitted an unlicensed person to use your Certificate of Registration to Practice Optometry.

Moreover, it is the Board's finding that you violated BPC section 3110(f) by acting unprofessionally.

**Orders**

(1) Order of Abatement:

The Board orders you to:

Comply with all statutes and regulations governing the practice of Optometry in the future.

(2) Order to Pay an Administrative Fine:

In addition, within thirty (30) days from the date of this citation but no later than August 31, 2014, you must pay an administrative penalty (fine) in the amount of \$3,000.00, which includes the following Class "C" citations:

a fine of \$1,000 for each day you were in violation of BPC 3110(u) for a total of \$2,000

a fine of \$1,000 for violation of BPC section 3110(f).

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Payment of the administrative penalty must be submitted to the Board, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Note the citation number on the check or money order and complete the enclosed Acknowledgment of Receipt of Citation/Payment of Fine with payment.

You may contest this modified citation or any portion thereof, by requesting a formal Administrative Hearing. The request for a formal Administrative Hearing must be in writing and be submitted to the Board within thirty (30) calendar days. (Please refer to the enclosed Instructions to Cited Person for additional appeal information.) You may withdraw a Request for Administrative Hearing any time prior to the date of the hearing.

Failure to request an Administrative Hearing in a timely manner will waive your right to contest this modified citation.

Pursuant to Business and Professions Code section 125.9, if you do not request a formal Administrative Hearing, payment of the fine does not constitute an admission of the violation(s) alleged.

If the fine is not paid or the modified citation contested within the allotted time frame, your license will not be renewed for the next renewal period until the fine is paid.

DATED: August 1, 2014



MONA MAGGIO

Executive Officer

State Board of Optometry

Department of Consumer Affairs

State of California

Complainant

*Mona Maggio*  
MONA MAGGIO  
Executive Officer